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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-65; FAR Case 2012-012; Item III; Docket 2012-0012, Sequence 1]

RIN 9000-AM24

Federal Acquisition Regulation; Free Trade Agreement-Colombia

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement (FTA) that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

DATES: Effective Date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-65, FAR Case 2012-012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 77 FR 27548 on May 10, 2012, to implement the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note). The comment period closed on July 9, 2012. No comments were received on the interim rule.

The interim rule added Colombia to the definition of "Free Trade Agreement country" in multiple locations in the FAR.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding \$77,494. The threshold for the Colombia FTA is \$7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic-Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

Because the Colombia FTA construction threshold of \$7,777,000 is the same as the World Trade Organization (WTO) Government Procurement Agreement (GPA) threshold, no new clause alternates are required for the Buy American Act-Construction Materials under Trade Agreements provision and clause (FAR 52.225-11 and 52.225-12) or the Recovery Act FAR clauses at 52.225-23 and 52.225-24.

The final rule corrects the alphabetical order of the listing of the Colombia Free Trade Agreement in the heading of the fourth column of the table at FAR 25.401(b).

II. Executive Order 12866

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, and that this rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Although the rule now opens up

Government procurement to the goods and services of Colombia, DoD, GSA, and NASA do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement 225.401-70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions of supplies or services with an anticipated dollar value between \$3,000 and \$150,000 (with some exceptions) are automatically reserved for small business concerns.

IV. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 currently approved under the Office of Management and Budget Control Numbers 9000-0136, titled: Commercial Item Acquisition; 9000-0130, titled: Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate; 9000-0025, titled: Trade Agreements certificate; and 9000-0141, titled: Buy American-Construction, respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from Colombia would be listed under.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: January 23, 2013

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy.

INTERIM RULE ADOPTED AS FINAL WITH CHANGE

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the Federal Register at 77 FR 27548, May 10, 2012, is adopted as final with the following change:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

25.401 [Amended]

2. Amend section 25.401, in the table that follows paragraph (b), by removing from the table heading "Colombia FTA, Chile FTA," and adding "Chile FTA, Colombia FTA," in its place.

[BILLING CODE 6820-EP]

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